



**THE CITY OF NEW YORK  
LAW DEPARTMENT**

100 CHURCH STREET  
NEW YORK, NY 10007

**MICHAEL A. CARDOZO**  
*Corporation Counsel*

**JOHN H. GRAZIADEI**  
*Senior Counsel*  
Telephone: (212) 442-3551  
Facsimile: (212) 788-9776

October 22, 2007

**VIA ECF**

Honorable Michael H. Dolinger  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Zhao v. City of New York, et al.*, 07 CV 3636 (LAK) (MHD)

Your Honor:

Defendants City of New York, Detective Ng, and Detective Milan write to respectfully request an enlargement of time permitting defendants until October 31, 2007 to comply with certain aspects of the Court's October 16, 2007 Order pertaining to discovery. To date, defendants have complied with the Court's Order to provide plaintiff with updated 26(a) disclosures and to provide plaintiff with the Bates numbers of plaintiff's Department of Correction inmate file that were, in fact, produced on October 8, 2007<sup>1</sup>. For the reasons described herein, defendants respectfully request a brief enlargement of time until October 31, 2007 to comply with the remaining aspects of the Court's Order. This is defendants' first request for an enlargement of time to respond to the Court's Order. Plaintiff does not consent to this request.

On October 16, 2007, in addition to the foregoing, the Court directed defendants to locate, obtain, and produce the "911" audiotape relating to the underlying incident or to provide plaintiff with an affidavit from the appropriate sources stating why the tape cannot be produced. The Court further ordered defendants to revise their privilege log, specifically with respect to documents relating to: (a) the NYPD's open investigation into the homicide of Danny Cabezas; (b) unrelated third-parties' arrest information that is protected by C.P.L. § 160.50; and (c) highly sensitive police training and investigative procedure information, to reflect defendants' bases for

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<sup>1</sup> The Bates numbers are NYC 274 through NYC 303.

asserting privileges as to the individual documents and to submit it to the Court with a memorandum of law concerning the application of the law enforcement privilege. Finally, the Court ordered defendants to submit a list of CCRB and IAB complaints with a general description of each complaint, a statement as to the outcome of the investigation, and the bases for defendants' assertions that the complaints are not of a similar nature to the claims in this litigation and therefore not relevant or discoverable.

Given the expedited discovery schedule in this case, which included depositions scheduled for October 10, 11, 12, 15, 16, 17, and 18, 2007, which include additional depositions scheduled to proceed today, October 22, 2007 and Thursday, October 25, 2007, which possibly include depositions noticed by plaintiff on Friday, October 19, 2007 to proceed on October 25 and 26, 2007, and which also possibly include Plaintiff's Third Set of Interrogatories and Request For Production of Documents and Request for Admission served on October 19, 2007, defendants are working in good faith to comply with the Court's Order and plaintiff's requests for discovery.<sup>2</sup> With respect to defendants' search for the related 911 tape, defendants are continuing to conduct a diligent search but have been unable to confirm the existence of any relevant audiotape aside from that produced to defendants by plaintiff. Prior to submitting an affidavit concerning the existence of the tape, however, defendants require additional time to ensure that a sufficient search has been conducted by the various agencies including the New York City Police Department and the Queens District Attorney's office. Further, given the demands of the discovery schedule, defendants respectfully request a brief enlargement of time to submit the revised privilege log, supporting documents, and disciplinary information to the Court until October 31, 2007.

Accordingly, defendants respectfully request an order from the Court granting an enlargement of time to comply with the remaining aspects of the Court's October 16, 2007 Order until October 31, 2007. Thank you for Your Honor's consideration of this request.

Respectfully submitted,

/s/

John H. Graziadei (JG 1333)  
Assistant Corporation Counsel

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<sup>2</sup> By Order dated October 17, 2007, the Court granted plaintiff's request for an enlargement of discovery until November 19, 2007.